



STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

UNH Law Faculty Union
and
University System of New Hampshire

Case No. E-0166-1
Decision No. 2015-122

Order on Motion for Review of Hearing Officer Decision

On May 4, 2015, the University System of New Hampshire (USNH) filed a Request for Review of Hearing Officer's Decision and Request for Rehearing on Certification Order. In its request, the USNH challenges Decision No. 2015-027 issued by the Hearing Officer on February 18, 2015,¹ specifically, the inclusion of the following two positions in the bargaining unit: Assistant Dean of Career Services & Professional Development (Assistant Dean) and Academic Success Director. The Union objects to the Request for Review on the ground, among others, that the request is untimely under Pub 205.01.

Requests for review of Hearing Officer decisions are governed by Pub 205.01, which provides in part as follows:

(a) Any party to a hearing or intervenor with an interest affected by the hearing officer's decision may file with the board a request for review of the decision of the hearing officer *within 30 days of the issuance of that decision* and review shall be granted. The request shall set out a clear and concise statement of the grounds for review and shall include citation to the specific statutory provision, rule, or other authority allegedly misapplied by the hearing officer or specific findings of fact allegedly unsupported by the record.

(b) The board shall review whether the hearing officer has misapplied the applicable law or rule or made findings of material fact that are unsupported by the record and the board's review shall result in approval, denial, or modification of the decision of the

¹ There was also an earlier Hearing Officer decision concerning the bargaining unit determination in this case. See Decision No. 2014-256 (November 20, 2014). There have been no requests for review of that decision.

hearing officer. The board's review shall be made administratively based upon the hearing officer's findings of fact and decision and the filings in the case and without a hearing or a hearing de novo unless the board finds that the party requesting review has demonstrated a substantial likelihood that the hearing officer decision is based upon erroneous findings of material fact or error of law or rule and a hearing is necessary in order for the board to determine whether it shall approve, deny, or modify the hearing officer decision or a de novo hearing is necessary because the board concludes that it cannot adequately address the request for review with an order of approval, denial, or modification of the hearing officer decision. All findings of fact contained in hearing officer decisions shall be presumptively reasonable and lawful, and the board shall not consider requests for review based upon objections to hearing officer findings of fact unless such requests for review are supported by a complete transcript of the proceedings conducted by the hearing officer prepared by a duly certified stenographic reporter.

(c) Absent a request for review, the *decision of the hearing officer shall become final in 30 days*.

(d) The request for review of the hearing officer's decision *shall precede, but shall not replace*, a motion for rehearing of the board's decision pursuant to Pub 205.02 and RSA 541-A:5.

(Emphasis added.) The Pub 205.01 30-day filing deadline is based on RSA 273-A:6, VIII which provides as follows:

Any proceeding referred to a hearing officer under this section *or RSA 273-A:8, I shall be reviewable by the board on motion of any party thereto or on motion of the board if the motion is made within 30 days of the rendering of such decision; otherwise the decision shall become final*. The review by the board may result in approval, denial, or modification of the decision of the hearing officer and may be made administratively by the board without a hearing de novo unless ordered by the board.

(Emphasis added.)

Here, the request for review of Hearing Officer Decision No. 2015-027 is untimely under Pub 205.01 because it was filed 75 days after the issuance of that decision.² Under Pub 205.01, Decision No. 2015-027 became final on March 21, 2015, 30 days after its issuance.³ Therefore, USNH's request for review is barred by Pub 205.01.

²Notably, the USNH neither challenged the Assistant Dean's and Academic Success Director's right to vote in representation election under Pub 303.08 nor objected to the conduct of election or conduct affecting the outcome of an election under Pub 303.11.

³ The USNH's reliance on PELRB Procedures & Practices II (B) (2) and *NH Dep't of Rev. Admin. v. PELRB*, 117 N.H. 976 (1977) is misplaced as both address the appeals of final PELRB order/decisions to the Supreme Court, and not requests for review of hearing officer decisions or rehearing of board decisions.

The USNH also requests a rehearing of the Certification of Representative and Order to Negotiate, Decision No. 2015-049 (April 2, 2015). Requests for rehearing are governed by Rule Pub 205.02 which provides in relevant part:

(a) Any party to a proceeding *before the board* may move for rehearing with respect to any matter determined in that proceeding or included in that decision and order *within 30 days after the board has rendered its decision* and order by filing a motion for rehearing under RSA 541:3...

(Emphasis added). In this case, there has been no decision by the Board as the Certification of Representative and Order to Negotiate, Decision No. 2015-049, was issued by the Hearing Officer and no request for review of that decision has been filed. In addition, under Pub 205.01 (d), a motion for review “shall precede, but shall not replace, a motion for rehearing.” Therefore, in a case where a decision was issued by a Hearing Officer, a request for rehearing must follow a Board’s decision on request for review of the Hearing Officer decision. Here, no such request has been filed with respect to Decision No. 2015-049. Therefore, the USNH’s request for review is barred by the requirements of Pub 205.02 and Pub 205.01 (d).

It should also be noted that, under Pub 303.12, a certification of representative can be issued only “after the time for rehearing under Pub 205.02 has passed.”⁴ The Certification itself is nothing more than a ministerial order documenting the outcome of the representation election and restating the previously determined bargaining unit.⁵ Here, the Certification was issued after the time for rehearing under Pub 205.02 has passed. Additionally, the USNH’s request for rehearing of the Certification cannot be used to circumvent the 30-day deadline applicable to any request to review the Hearing Officer’s bargaining unit determination in this case.

⁴ Pub 303.12 provides:

After the board has disposed of any challenges and objections filed under Pub 303.10 and Pub 303.11 and after the time for rehearing under Pub 205.02 has passed, the board shall issue a decision and order setting forth the results of the election and certifying the employee organization that has been elected the exclusive representative of the bargaining unit for which the election was held, or certifying that a majority of the employees properly voting in the election voted against representation by any employee organization.

⁵ Decisions Nos. 2014-256 and 2015-027.

Based on the foregoing, the USNH's request for review of Hearing Officer Decision No. 2015-027 and rehearing of Certification of Representative and Order to Negotiate, Decision No. 2015-049 and the USNH's request for a hearing on its request for review are denied.

So ordered.

Date: June 12, 2015

A handwritten signature in cursive script, appearing to read "David J. T. Burns", written in dark ink.

David J. T. Burns, Esq., Alternate Chair

By vote of Alternate Chair David J. T. Burns, Esq., Board Member James M. O'Mara, and Board Member Senator Mark Hounsell.

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